

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



MIKE COX
ATTORNEY GENERAL

P.O. Box 30212
LANSING, MICHIGAN 48909

July 14, 2006

Honorable Mike Nofs
State Representative
The Capitol
Lansing, MI 48909-7514

Honorable Bruce Caswell
State Representative
The Capitol
Lansing, MI 48909-7514

Dear Representatives Nofs and Caswell:

Attorney General Cox has asked me to respond to your recent letters in which you ask several questions regarding pistol purchase permits under 1927 PA 372, MCL 28.421 *et seq.*, also known as the Firearms Act. Your questions generally relate to conduct of the police entities charged with administration of the licensing process. Due to the subject matter of the request, I asked staff in the Criminal Division to review your letters. The following represents their findings.

You first ask whether a law enforcement entity that issues purchase permits¹ is allowed to set limited hours during which an applicant may obtain a permit. For purposes of your question, it is assumed that limited hours means some number of hours materially less than those set to conduct normal public business.

Section 2(12) of the Firearms Act, MCL 28.422(12), provides:

A licensing authority shall implement this section during *all of the licensing authority's normal business hours* and shall set hours for implementation that allow an applicant to use the license within the time period set forth in subsection (6).^[2] [Emphasis added.]

While the Firearms Act is silent as to what hours may appropriately be set as normal business hours of the licensing authority, it does require the authority to implement the section regarding purchase permit applications during "all" normal business hours. This language is unambiguous and must, therefore, be enforced as written. See *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999). Thus, a licensing authority may not set business hours for the

¹ A purchaser of a pistol is first required to obtain what is known as a purchase permit under MCL 28.422.

² Subsection 6 states in relevant part: "A license is void unless used within 10 days after the date of its issue." MCL 28.422(6).

processing of pistol purchase permits that are materially less than those set to conduct normal public business.

You also ask two questions pertaining to de facto local regulation in the permit process: whether a law enforcement entity may limit the number of purchase permits that an applicant may receive in a single visit and whether a law enforcement entity may impose a waiting period after an initial application for a purchase permit.

The Firearms Act does not contain any provision authorizing a limitation on the number of permits an applicant may obtain at one particular time nor does it provide for the imposition of a waiting period after the application for a purchase permit. Thus, the basis for imposition of any limitation or waiting period would presumably be derived from local ordinance, regulation, or policy. However, MCL 123.1102 provides:

A local unit of government shall not impose special taxation on, enact or enforce any ordinance or regulation pertaining to, or *regulate in any other manner* the ownership, registration, *purchase*, sale, transfer, transportation, or possession of *pistols* or other firearms, ammunition for pistols or other firearms, or components of pistols or other firearms, except as otherwise provided by federal law or a law of this state. [Emphasis added.]

In interpreting this provision as well as other related provisions of Michigan law, the Michigan Court of Appeals has ruled that the Legislature has, in effect, fully occupied the realm of firearms regulation and "stripped local units of government of all authority to regulate" in this area. *Michigan Coalition for Responsible Gun Owners v City of Ferndale*, 256 Mich App 401, 413; 662 NW2d 864 (2003). It is axiomatic that a subunit or agency of a local governmental unit is subject to the same constraints that limit the authority of the local unit itself.³ Research has disclosed no federal law or other law of this State authorizing the regulations at issue here. Thus, given the prohibition upon local regulation of firearms licensing, the placement of limitations upon the number of purchase permits an applicant may obtain in a single visit, or the imposition of a waiting period after an initial application for a purchase permit by local regulation, ordinance, or other policy is impermissible.⁴

You also ask several questions related to the assessment of certain fees by the licensing authority that are not expressly provided by statute. Specifically, you ask whether a law

³ See, e.g., *Doyle v Kammeraad*, 310 Mich 233, 241; 17 NW2d 165 (1945) (control of a city police department is a function of local municipal government); *In re Forfeiture of \$19,250*, 209 Mich App 20, 32; 530 NW2d 759 (1995) (the county sheriff's department is a local unit of government).

⁴ As previously noted, MCL 28.422(12) further requires the licensing authority to set hours for implementation that allow the applicant to use his or her purchase permit within the time period set forth in subsection (6). Subsection (6) mandates that a purchase permit is only valid for 10 days after the date of issue. MCL 28.422(6).

enforcement entity may charge its own fee for a purchase permit, whether a fee for a safety inspection may be assessed, and whether a fee may be charged for providing notary public services.⁵

The question whether a local unit of government may charge fees for purchase permits and safety inspections was answered in a recent letter signed by then Chief Deputy Attorney General Carol Isaacs to Representative William J. O'Neil dated February 20, 2004. That letter noted that 2000 PA 381 repealed the part of MCL 28.423 that had provided authorization to assess a fee concerning pistol purchase permits and also cited the broad preclusive effect of MCL 123.1102 in this area. It then concluded that local units of government may not charge applicants administrative fees for the expenses associated with gun purchase permits and gun safety inspections as there is no law authorizing such fees and, absent state or federal law providing such authorization, MCL 123.1102 expressly prohibits such fees. A copy of that letter is enclosed for your information.

Your third fee-related question deals with fees associated with providing the services of a notary public. Section 2(4) of the Firearms Act requires that applications for licenses under this section shall be signed by the applicant "under oath." MCL 28.422(4). In the context of a license for concealed carry, the statute specifies that this oath "shall be administered by the county clerk or his or her representative." MCL 28.425b(1). However, in the context of a pistol purchase permit, no such specification is included in the statute. To the extent a purchase permit requires the services of a notary public,⁶ any notary public of the applicant's choosing may suffice to meet the requirement. It appears from your letters that some licensing authorities are providing this service to applicants. There is nothing in the Firearms Act with regard to purchase permits that suggests that an applicant is bound to use those notary services offered by the licensing authority, so long as the application is otherwise properly executed. In any event, the Michigan Notary Public Act, 2003 PA 238, MCL 55.261 *et seq.* places a \$10 cap upon the fee that may be charged by a notary public for performing a notarial act. MCL 55.285(7).

The question then arises whether the payment of a \$10 fee to the licensing authority for performing a notarial act is a local fee levied in connection with the application process and thus prohibited under MCL 123.1102. As previously noted, the services of a notary public are readily available from sources apart from the licensing authority, and the applicant is therefore not obligated to secure those services from the licensing authority. The fact that the licensing authority may choose to offer that service for the convenience of applicants does not render the

⁵ While MCL 28.423 had provided for the assessment of a \$5 fee in connection with obtaining a purchase permit before repeal of that provision by 2000 PA 381, no statutory authority had ever been provided for charging a fee for a safety inspection alone.

⁶ This letter presumes for purposes of answering your question that the phrase "signed by the applicant under oath" requires a notary to perform a jurat function under the circumstances presented here, rather than an acknowledgment. See MCL 55.265(a) (defining "[j]urat").

associated fee prohibited. The fee is independent of the licensing process in much the same way payment to a municipal parking authority used to park one's vehicle when filing an application would be independent of the licensing process. Therefore, provided that the licensing authority does not mandate that the notarial act be performed by its agency, it may charge, in conformity with the Notary Public Act, those applicants who choose to use that agency's notarial services in connection with obtaining a pistol purchase permit.

You also ask whether a law enforcement entity may require applicants for a pistol purchase permit to fill out a form asking for information not required by the Firearms Act. Your letter does not specify the kind of non-required information that might be asked for and so this response will address the general principles involved. The licensing authority is charged with the responsibility of verifying the eligibility of the applicant. MCL 28.422(3). While the Firearms Act delineates eligibility requirements, it does not specify what questions the licensing authority may ask in order to verify that those requirements are met. Generally, administrative agencies possess those powers expressly conferred by law and those powers granted by necessary or fair implication to effectuate the express powers. *Hanselman v Killeen*, 419 Mich 168, 187; 351 NW2d 544 (1984); *Pharmaceutical Research & Manufacturers of America v Dep't of Community Health*, 254 Mich App 397, 403-404; 657 NW2d 162 (2002). Thus, so long as questions submitted to an applicant are necessary to fully effectuate the statutorily mandated determination of eligibility, they would be proper, but questions submitted to an applicant that have no relevance to the determination of eligibility would be without authority and improper.

Finally, you ask if a law enforcement entity may keep a file or database of residents with a list of all the pistols presented for registration or inspection. MCL 28.429 directly addresses your question. It provides, in pertinent part:

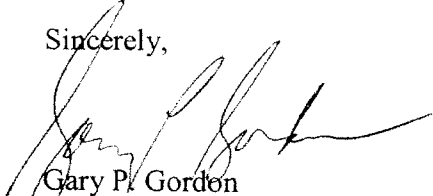
If the person presenting the pistol is eligible to possess a pistol under section 2(1), a certificate of inspection shall be issued in triplicate on a form provided by the director of the department of state police, containing the name, age, address, description, and signature of the person presenting the pistol for inspection, together with a full description of the pistol. The original of the certificate shall be delivered to the registrant. The duplicate of the certificate shall be mailed within 48 hours to the director of the department of state police and filed and indexed by the department and kept as a permanent official record. *The triplicate of the certificate shall be retained and filed in the office of the sheriff, commissioner, or chief of police.* [Emphasis added.]

Thus, a law enforcement entity is required to keep a file with the name, address, and weapon information of all pistols presented for registration or inspection. This database of information is useful for a number of purposes, including in the event a weapon is stolen or the weapon is used in a crime. Furthermore, record knowledge of this type has a high level of utility for first responders when presented with a domestic violence call, a burglary in progress, a

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person threatening suicide, or numerous other scenarios where the possible presence of a pistol might prove relevant in determining the appropriate response.

Sincerely,



Gary P. Gordon
Chief Deputy Attorney General

Enc.

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



MIKE COX
ATTORNEY GENERAL

P.O. Box 30212
LANSING, MICHIGAN 48909

February 20, 2004

Honorable William J. O'Neil
State Representative
The Capitol
Lansing, MI 48913

Dear Representative O'Neil:

Attorney General Cox has asked me to respond to your recent letter in which you ask whether local units of government may charge applicants administrative fees for the expenses associated with gun purchase permits and gun safety inspections. Due to the subject matter of the request, I asked staff in the Criminal Prosecutions Division to review your letter. The following represents their findings.

Prior to July 1, 2001, local units of government were able to charge a fee of not more than \$5.00 for the actual and necessary expenses of a license to purchase, carry, or transport a pistol under MCL 28.423. Specifically, MCL 28.423 stated:

A local unit of government may charge an applicant a fee of not more than \$5.00 for the actual and necessary expenses of a license to purchase, carry, or transport a pistol issued under [MCL 28.422].

2000 PA 381, section 1 repealed this section on July 1, 2001, and there has been no subsequent legislation authorizing a local unit of government to assess fees for the expenses related to the purchase or transport of a pistol. Administrative fees presently authorized in Michigan law relating to firearms are limited to an application for a permit to carry a concealed weapon. MCL 28.425b(5). This statute, however, does not authorize a local unit to assess fees associated with permits to purchase a gun or gun safety inspections. This provision was also enacted as part of 2000 PA 381, creating the clear implication that the legislative intent was to eliminate the fee previously authorized under MCL 28.423. The doctrine of statutory interpretation providing that the express mention of one thing implies the exclusion of other similar things further supports this conclusion.

Local units of government may not establish fees associated with the purchase of a gun or safety inspections absent legislative authority. Indeed, under MCL 123.1102, local units of